

EXHIBIT

DATE 3-26-13

HB 593

2012 State Tax Appeal

Rebish & Helle and Helle Livestock

Vs.

Montana Department of Revenue

Helle Livestock and Rebish & Helle are multigenerational family partnerships that operate their ranches in Beaverhead and Madison counties. We use private land, private leases, state DNRC leases, and BLM and Forest Service permits across a wide spectrum of elevations in the mountains and valleys of Southwest Montana. We raise both sheep and cattle and farm irrigated and dry-land crops producing wheat, barley, alfalfa hay and pasture.

Reason for Appeal

According to the response the DOL made to the questions on our appeal, it is apparent that they are still unclear of the reason we are appealing and it is obvious I need to clarify. Simply put, we are disputing the production values of the soils, from the Soil Survey, used when calculating our rangelands carrying capacity. We are not disputing the methodology of the formula only the data extracted from the Soil Survey that is plugged into the formula. The amount of AUM's used in the calculations of our productivity values are based on soil survey ecological site descriptions representing a range site in climax condition. These values are too high when compared with our historic use of the land and recent clippings done by NRCS range specialists. This could mean that the soil survey may not be accurate and those values may need to be adjusted. The Madison county soil survey was completed in the 1970's when the use of better mapping and GIS technology was not available. We are concerned that the DOR was unwilling to adjust the values after a large block of land in the Southwest corner of Madison County was questioned for its accuracy. Even if the values did represent the potential of the land at climax, the actual productivity of the land is substantially less than the value that they used. (NRCS rangeland inventory) In other Ag land classifications other pertinent information such as county averages of wheat yields and hay production are used, and the DOR applies adjustment factors for each county.

The following chart shows the increase in AUM's.

DOR Carrying Capacity	2008 AUM's	2011 AUM's	increase
Helle Livestock	837	1205	31%
Rebish and Helle	2793	4593	39%

NRCS Clipping estimates	NRCS AUM's	DOR AUM's	increase
Rebish & Helle EQUIP	2082	4593	55%

The exclusive use of the soil surveys may not always accurately depict what the soil is capable of producing. It is not a matter that we choose not to use that high of a stocking rate, but that the land can't produce that level of production because of its current ecological state. (See the Memo from Jeff Mosely Extension Range Management Specialist)

Legal Issues

Our interpretation of the law and the legislative intent is that when calculating productive capacity of the land for taxation purposes, that value should:

- 1.) Reflect the amount of grazing that a pasture will sustain without injurious effect to vegetative growth due to the quality of the soil and the environment where it occurs. (Subchapter 6 Agricultural Land 42.20.601 DEFINITIONS)
- 2.) Reflect the ability of a soil to produce crops or forage under the environment where it occurs and under a specified system of management. (Subchapter 6 Agricultural Land 42.20.601 DEFINITIONS)
- 3.) Recognize that the productive capacity can change over time due to changes in soil fertility. (Subchapter 6 Agricultural Land 42.20.601 DEFINITIONS)
- 4.) Be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes. (MCA 15-7-201. Legislative intent -- value of agricultural property)
- 5.) Reasonably approximates that which the average Montana farmer or rancher could have attained. (MCA 15-7-201. Legislative intent -- value of agricultural property)
- 6.) Use soil surveys and maps **and all other pertinent available information.** (MCA 15-7-103. Classification and appraisal -- general and uniform methods)
- 7.) Be validated by the use of on-site field reviews, operator interviews, and inspection by local department appraisal staff. (Subchapter 6 Agricultural Land 42.20.602 STEPS IN DETERMINING THE CLASSIFICATION OF AGRICULTURAL LAND)

The DOR should bear a certain burden of providing documented evidence to support its assessed values. Framers Union Cent. Exch. V. Department of Revenue, 272 Mont. 471, 901 P.2d 561,564 (1995).

Review Process

After bringing it to the attention of the DOR during the appeal and review process, that the values they were using were too high, they provided no basis or proof that the land was capable of that high of productivity. Therefore we argue that when the DOR calculated our productivity values on our rangeland they failed to:

- 1.) Use an amount of forage that reflects the amount of grazing that a pasture will sustain without injurious effect to vegetative growth due to the quality of the soil and the environment where it occurs.
- 2.) Reflect the ability of a soil to produce crops or forage under the environment where it occurs.

- 3.) Recognize that the productive capacity can change over time due to changes in soil fertility.
- 4.) Reasonably approximate that which the average Montana farmer or rancher could have attained.
- 5.) Use other pertinent available information.
- 6.) Conduct an onsite review and consult with an expert to validate their appraisal.

For these reasons, we feel that the DOR failed to articulate a rational connection between the factual findings we provided and the decision they rendered. Therefore the STAB should examine the record to ensure the agency decision was founded on a reasonable evaluation of the facts and they followed the law and their rules and procedures. The STAB should be careful not to rubber-stamp the decision of the DOR when their decision is inconsistent with a statutory mandate or the legislative intent.

What value is the taxpayer asking for?

We are asking that the DOR reevaluate the carrying capacity of the land using other pertinent information, namely the site-specific clipping data used in our Rangeland Inventory by the NRCS range specialist and apply a similarity index to the soils based on their current ecological health. This would result in a 40 to 60 percent reduction in the values for some of the soils in the area. We also recommend that this matter be evaluated by experts in Range Ecology to make sure that the productivity values better approximate the rangelands productive ability.

Respectfully Submitted,

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